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HIGH COURT OF CHHATTISGARH: BILASPUR

CORAM: HON'BLE SHRI S.R. NAYAK, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

MISCELLANEOUS APPEAL (C) NO. 295/2006

APPELLANT — The Oriental Insurance Co.Ltd., Branch Office No.2, Shri Mahavir Gaushala Parisar, Modahapara Raipur (CG).

Versus

RESPONDENTS

1. Smt. Aarti Shukla, w/o. Late Rajesh Shukla, about 33 years, occupation advocate, r/o. near to Benubadi Gharghoda, Thana & Tahsil Gharghoda, Dist. Raigarh (CG).

2. Gurudayal Sharma, S/o. Late B.L. Sharma, occupation vehicle owner, r/o. quarter No.492, near to Shitala Mandir, New Colony Changora Bhatha, Raipur (CG).

3. Smt. Krishna Shukla, w/o. Late Chandrashekhar Shukla, age about 65 years, r/o. near to benubadi Gharghoda, Thana & Tahsil Gharghoda, Dist. Raigarh (CG).

PRESENT:

Shri Sudhir Agarwal, counsel for the appellant.

ORAL O R D E R

(Dated 29/11/2006)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth, "the Act") has been filed against the award

dated 14/07/2006 passed by Motor Accident Claims Tribunal (henceforth "Tribunal"), Raigarh, in Claim Case No. 28/2004 whereby award of Rs.7,82,000/- (Rupees seven lakhs and eighty-two thousand) has been passed against respondent No.2 and appellant.

Respondent No.1 Smt. Aarti Shukla, wife of Rajesh Shukla filed an application under Section 166 of the Act, for claiming compensation of Rs.11,00,000/- *inter alia* on the ground that her husband Rajesh Shukla who was going with Hemant Shukla from Dharamjaigarh to Gharghora on 29/05/2004 by Motor Cycle No. CG-04/3757 met with an accident on way, sustained severe injuries and fell into Coma. He was taken to Primary Health Centre, Gharghora, District Hospital, Raigarh and thereafter to Life Birth Hospital, Raipur, where he remained unconscious and was under treatment till his death i.e., up to 18/06/2004. The fateful Motor Cycle No. CG-04/3757 was insured with the appellant, owner of the vehicle is respondent No.2 – Gurudayal Sharma. Smt. Aarti Shukla is an Advocate by profession and her husband Rajesh Shukla (since deceased) was also an Advocate by profession. Monthly income of Rajesh Shukla was Rs.10,000/- and at the time of accident he was aged around 36 years. Respondent No.2 did not file any written statement. Respondent No. 3 remained ex parte. Appellant denied the claim of respondent No.1 and pleaded that without having a valid driving license the vehicle was driven by the driver.

Learned Tribunal after appreciating the evidence on record held that Rajesh Shukla met with an accident on 29/05/2004 while using Vehicle Motor Cycle No. CG-04/3757 and as result of

accident he died on 18/06/2001. Learned Tribunal further held that appellant failed to prove that the vehicle was driven in contravention of policy conditions. Learned Tribunal after assessing the compensation passed the award.

Learned counsel for the appellant contended that respondent No.1 failed to prove that Rajesh Shukla died as a result of injuries caused to him in accident on 29/05/2001. His sole emphasis is that Rajesh Shukla was admitted in hospital for a long time and after 21 days from the date of accident he died. Smt. Aarti Shukla in her evidence has stated that her husband Rajesh Shukla met with an accident while driving Motor Cycle No. CG-01/3757, sustained various injuries and was taken to Primary Health Centre, Gharghora, on their advice he was taken to District Hospital, Raigarh and thereafter he was shifted to Life Birth Hospital, Raipur, for treatment where he remained under Coma till his death i.e., up to 18/06/2001. Not a single question has been asked in her cross examination to challenge that Rajesh Shukla had not died as a result of accident. Even to rebut her testimony, no evidence has been adduced by the appellant. Therefore, from unchallenged testimony of Aarti Shukla, it was proved that Rajesh Shukla died as a result of injuries sustained by him in accident and learned Tribunal did not commit any error while holding so.

Further contention of the learned counsel for the appellant is that learned Tribunal erred in accepting monthly income of deceased and awarding compensation towards loss of income on higher side. It is not in dispute that deceased Rajesh Shukla was Advocate by profession. Smt. Aarti Shukla in her evidence stated

that monthly income of her husband was Rs.10,000/- per month. To rebut her statement, no evidence has been led by the appellant, even then, the Tribunal instead of accepting his monthly income Rs.10,000/-, accepted only Rs.6,000/- per month. Evidently, learned Tribunal did not assess loss of earning on higher side.

Finally learned counsel for the appellant contended that deceased himself was negligent. Neither he raised such a plea in his written statement nor, otherwise, raised such a plea before the Tribunal, therefore, in absence of such a plea before the Tribunal, he is refrained from raising such a plea before the appellate Court.

No other points have been raised by the appellant in the course of arguments.

In the result, the appeal being devoid of merit is liable to be dismissed summarily and is accordingly dismissed *in limine*. No costs.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Chief Justice

Raju